

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 97-583

October 21, 1997

PUBLIC UTILITIES COMMISSION,  
Rulemaking: Consumer Education  
Program (Chapter 302)

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT and HUNT, Commissioners

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## **I. INTRODUCTION**

The Maine Legislature has decided that all Maine electricity consumers shall have the right to purchase generations services from competitive providers beginning on March 1, 2000.<sup>1</sup> The legislation requires the Commission to adopt a rule to implement a consumer education program to educate the public about implementation of retail access and its impact on consumers.<sup>2</sup> In this rulemaking, we propose a process and a framework for implementing the program.

## **II. STATUTORY REQUIREMENTS**

Title 35-A, section 3213(2) directs the Commission to organize a Consumer Education Advisory Board (Board) to investigate and recommend methods to educate the public about the implementation of retail access and its impact on consumers. The statute further directs the Commission to ensure "broad representation of residential, industrial and commercial electric consumers, public agencies and the electric industry on the Board." 35-A M.R.S.A. §3212(2).

The Legislature directs the Board to address the following matters in its recommendations to the Commission:

- (1) the level of funding necessary for adequate educational efforts and the appropriate source of that funding;

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<sup>1</sup> During the 1997 Legislative session, the Maine Legislature enacted P.L. 1997, Chapter 316, "An Act to Restructure the State's Electric Industry," (the Act) codified as Chapter 32 of Title 35-A (35-A M.R.S.A. §§ 3201-3217).

<sup>2</sup> The rule is a "major substantive rule," as defined and governed by 5 M.R.S.A. §§ 8071-8074. The Commission must adopt the rule provisionally by February 1, 1998. The Legislature must review the provisional rule and authorize its final adoption either by approving it with or without change or by taking no action. 5 M.R.S.A. §8072.

- (2) the aspects of retail access on which consumers need education;
- (3) the most effective means of accomplishing the education of consumers;
- (4) the appropriate entities to conduct the education effort; and
- (5) any other issue relevant to the education of consumers regarding the implementation of retail access and its impact on consumers.

*Id.* Finally, the legislation requires the Commission to consider the recommendations of the Advisory Board when it adopts rules.

### **III. CONSUMER EDUCATION ADVISORY BOARD**

After soliciting nominations, the Commission organized the Board consisting of 15 members.<sup>3</sup> In accordance with the statute, members of the Board included representatives of residential, industrial and commercial electric consumers, public agencies, and the electric industry.<sup>4</sup> The Board submitted its recommendations to the Commission on October 27, 1997.<sup>5</sup> The proposed rule incorporates most of the Board's recommendations.

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<sup>3</sup> Board membership dropped to 14 after one member resigned.

<sup>4</sup> The following individuals served on the Consumer Education Advisory Board: Donald Berry, Sr. (Chair), Representative, State Legislature; Dan Allegretti, Director, ENRON Corporation; Ellie Bickmore, Maine Grocers Association; Eric Bryant, Office of the Public Advocate; Debbie Burd, Executive Director, Western Mountains Alliance; Dan Dauphinee, Operations Manager, Northeastern Log Homes, Inc.; Carla Dickstein, Coastal Enterprises, Inc.; Geoffry Green, Manager, Revenue Operations, Central Maine Power Company; John Knox, residential consumer and retired communications professional; Pat Kosma, Director Kennebec Valley Consumer Action Program; Laurie LaChance, Economist, State Planning Office; John Marvin, Maine Council of Senior Citizens; Chet Oiler, Manager, Kennebunk Light & Power District; and Matthew Thayer, Director, Consumer Assistance Division, MPUC.

<sup>5</sup> A copy of these recommendations is appended as Attachment B to this Notice.

#### **IV. DISCUSSION OF INDIVIDUAL SECTIONS**

##### Sections 1 and 2: Purpose of the Rule and Definitions

Section 1 states the purpose of the rule. Section 2 contains definitions. Some of the definitions are included in the statute (35-A M.R.S.A. § 3201) and are included in the proposed rule for convenience.

##### Section 3: Program Scope

Subsection A describes the consumer education program (CEP) goals. The goals are those identified by the Board. Subsection B identifies the target audience for the program. The program is targeted to residential, small business consumers and municipal consumers. The rule does not contain a definition of small business consumers. We anticipate that the program will target those businesses that, due to their small size, do not have the resources to conduct an in-house educational effort to help them make informed decisions about issues relating to retail access. We invite comments on (1) whether the rule should contain a definition of small business consumer, and if so (2) the criteria for such a definition, i.e. whether the definition should be based on usage, number of employees or some other factor.

The Board has used the term "small commercial consumer" rather than the term "small business consumer" to identify consumers who "are not apt to have the clear financial incentive or wherewithal to research the changes in the market necessary to make informed decisions." The Board suggests that the number of employees may be the appropriate criterion for identifying the non-residential audience whom the program should reach. We have used the term "business" rather than "commercial" because many electric utilities have a rate class for commercial consumers that does not include small industrial consumers. Because the program is targeted to both small industrial and commercial consumers, the use of the term "small business consumer" will help to avoid confusion. This term also includes, of course, religious, community and educational institutions and organizations that take service at commercial rates but would not ordinarily be considered businesses.

The Board also recommends that the Commission tailor the program so that it meets the needs of certain residential consumers who may have needs different from those of other residential consumers. Residential consumers in this category include: low-income consumers, senior citizens, disabled consumers, the illiterate or functionally illiterate, and consumers who do not speak English or for whom English is a

second language. While we have not identified this subgroup of residential customers in this section of the proposed rule, we will consider the best methods of reaching these residential consumers when we develop our Consumer Education Plan, discussed below.

Subsection C lists the topics for the educational program. We expect that the program will educate the target audience on the listed topics identified by the Board. The proposed rule provides us with the flexibility to include additional topics as the need arises.

Subsection D lists methods of education. The methods are those recommended by the Board. The Board suggests that many of these methods are complementary and that they should be used in an integrated fashion. We agree and intend to follow the Board's suggestion.

#### Section 4: Funding

Subsection A identifies the maximum level of funding for the program as \$1,600,000. This is the amount the Board recommends should be authorized by the Commission for investment in the CEP. To the extent that the revenues from the assessments used to fund the program are not used by the end of the program in 2000, the proposed rule provides that the unspent amount will be returned to the assessed utilities by reducing their next annual assessment. The returned funds will be flowed through to ratepayers in an appropriate rate setting proceeding.

The Board noted that the estimated level of funding in other states that have proposed or approved consumer education programs is about \$1 per resident and that the approved funding for California's consumer education program is approximately \$3 per resident. The Board estimates that its recommended level of funding is about \$1.30 per capita which it determined was within the range of funding per capita for plans in other states.

Subsection B identifies the source of the funding. Funding will be provided by a special assessment on all electric and transmission and distribution utilities subject to assessment under 35-A M.R.S.A. § 116. The assessment will be based on a percentage of revenues and will be designed to raise no more in total than the specified amount per year identified in the rule.

The proposed rule further provides that the assessment is a just and reasonable operating cost for ratemaking purposes and that utilities may recover the cost from ratepayers. The rule further explicitly states that these amounts may be recovered

even if the costs are incurred while the utility rates are governed by a rate cap plan.

The Board recommended that the program be funded from fees paid by competitive generation providers and that customers of distribution utilities should be charged for any unrecovered balance to the extent that fees assessed to generation providers appear impracticable or inadequate to fully recover the costs of the CEP over several years. The Board recommended that electric utilities initially pay for the costs of the consumer education program but that after retail access begins the transmission and distribution utilities would be reimbursed from fees paid by competitive generation providers.

We have not included this recommendation in our proposed rule. The proposed rule allows immediate program funding needs to be met as quickly as possible. In addition, the proposed rule is efficient and easily administered. It eliminates the need for a complex reimbursement system that would be required under the Board's recommended approach. Moreover, fees charged to competitive generation providers would likely have to be quite high in order to pay for the cost of the program. A sizable licensing fee may pose a barrier to entry into the competitive generation market.

In addition, the consumer education program is designed to facilitate informed decision making by consumers and to provide an objective and credible source of information to consumers. Our proposal to allow recovery of the costs of the program from ratepayers of assessed utilities is consistent with the proposed program's provision of educational services to ratepayers.

The Board has also suggested that if program costs are charged directly to consumers of distribution utilities, these costs should be billed through a charge that is identified on customer bills either as a charge for consumer education or as part of a "public goods" charge. We note that the statute requires electric utilities to issue unbundled bills beginning January 1, 1999. By January 31, 1998, each electric utility is required to file with the Commission a bill unbundling proposal. The Commission is required to adopt a rule by July 1, 1998 establishing unbundled bill requirements. 35-A M.R.S.A. § 3213(1). In that rulemaking proceeding, we will address whether charges other than those for generation, transmission and distribution should be stated separately on bills. Thus, we do not address in this proceeding the manner in which the charge for the cost of the consumer education program will appear on consumer bills.

Section 5: Implementation.

In subsection A, the rule proposes that the Commission will design and implement the Consumer Education Program (CEP) and that it may hire a consultant to aid it in the program design and implementation. This proposal is consistent with the Board's recommendation.

The Board also recommended that an advisory board be created to assist the Commission and the consultant in implementing the CEP. Because of the limited timeframe for developing the program and the availability of the current Board's recommendations which we expect will provide additional guidance in the implementation process, the proposed rule does not envision the assistance of a new advisory board in developing and implementing the proposed plan.

Subsection B of this section proposes that the Commission will issue a proposed consumer education plan and provide an opportunity to comment on the proposed plan. The rule proposes that the Commission will adopt a final plan by August 4, 1998. This proposal is consistent with the Board's recommendation.

Subsection C proposes that the Commission may modify its plan based on the results of evaluations it has performed. This provision provides flexibility to improve the program as necessary. Evaluations are discussed in our description of section 8.

Subsection D proposes that the program continue through September 2000, with the option to extend the program after that date if the Commission determines that extending the program is in the public interest. This provision is consistent with the statutory timetable for retail access beginning on March 1, 2000. There will be a period of at least several months after retail access begins during which the CEP will have a vital role in helping consumers to make informed decisions and avoiding consumer confusion over the changes that will accompany retail access. The purpose of the proposal to allow for extension of the program is to provide the Commission with the flexibility to continue the program beyond September 2000 if it identifies the need to do so. This subsection is consistent with the Board's recommendation.

Section 6: Utility Sponsored Educational Activities.

As discussed above, the proposed rule calls for the CEP to be funded in the amount of \$1.6 million. Under the proposed rule, electric and transmission and distribution utilities provide the funding for the education program and recover the

costs from ratepayers. Thus, utility ratepayers would be providing substantial funds for a comprehensive state-wide educational program. For this reason, subsection A of the proposed rule states that the costs of any additional educational activities undertaken by utilities outside the Commission's program will not be recovered in rates unless the utility demonstrates that such additional efforts are necessary and in the public interest.

Subsection B of the proposed rule requires electric and transmission and distribution utilities to provide the Commission all materials related to their own educational activities. Such materials would include brochures, newsletters, bill inserts, and scripts or other descriptions of television and radio ads. This material would not be subject to Commission approval. The purpose of the provision is to inform the Commission prior to implementation of utility-sponsored educational activities so that the Commission can work with the utility to avoid inconsistent or contrary educational messages. We note that although the provision does not require approval by the Commission, we would expect the utility to work cooperatively with the Commission in redrafting messages to avoid confusion to consumers. Access to utility materials would also enhance the Commission's ability to respond to questions from the public regarding information provided by utilities.

Subsection C simply restates the Commission's authority pursuant to 35-A M.R.S.A. § 1303 to investigate any matter relating to a public utility. Thus, an investigation may be warranted if the spirit of cooperation envisioned in subsection C is violated and this violation results in a utility providing potentially misleading or inaccurate information to the public.

#### Section 7: Dissemination of Information

In this section, the proposed rule states the Commission's authority to require that electric utilities disseminate information produced as part of the Commission's consumer education program. Such required dissemination would likely be through bill inserts which provide a convenient and direct method of reaching consumers. This subsection also provides that the Commission may require the utility to disseminate information that clarifies or corrects a confusing, inaccurate, or misleading message provided by the utility. As discussed above, a cooperative process should enable the Commission to correct in advance any utility-sponsored messages that might confuse consumers. In the event that the cooperative process envisioned in the rule breaks down, however, this provision of the proposed rule allows the Commission to quickly correct the problem by

requiring the utility to provide the correct information. This may be done through bill inserts or some other method.

Section 8: Program Research, Monitoring and Evaluation;  
Reports to the Legislature

This section contains the various processes through which the Commission may measure, test and evaluate the success of its consumer education program. This section also provides for reports to the Legislature on the results of its program evaluation.

**V. PROCEDURES FOR THIS RULEMAKING**

This Rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A §§ 8051-8058. **A public hearing is scheduled in this matter for December 5, 1997 at 9:30 a.m. at the Commission's Offices, 242 State Street, Augusta Maine 04333. Written comments on the proposed rule may be filed until December 15, 1997; however, the Commission requests that comments be filed by November 18, 1997 to allow for follow-up inquiries during the hearing. Supplemental comments may be filed after the hearing.** Written comments should refer to the docket number of this hearing, Docket No. 97-583, and sent to the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

Please notify the PUC if special accommodations are needed in order to make the hearing accessible to you by calling 287-1396 or TTY 1-800-437-1220. Requests for reasonable accommodations must be received 48 hours before the hearing.

**VI. FISCAL AND ECONOMIC EFFECTS**

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed rule is expected to be minimal. The Commission invites all interested parties to comment on the fiscal impact and all other implications of this proposed rule.

**VII. SERVICE**

The Administrative Director shall send copies of this Notice and the attached proposed rule to:

1. All electric utilities in the State;



2. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;
3. All persons listed on the Commission's list of persons who wish to receive notice of all electric restructuring proceedings;
4. All persons listed on the service list or who filed comments in the *Inquiry, Public Utilities Commission, Inquiry into Terms and Conditions for Standard-Offer Service and the Selection of Standard-Offer Providers*, Docket No. 97-519;
5. Members of the Consumer Education Advisory Board; and
6. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5);
7. Executive Director of the Legislative Council, State House Station #115, Augusta, Maine 04333 (20 copies).

Accordingly, we

O R D E R

1. That the Administrative Director send copies of this Order and the attached rule to all the persons listed above and compile a service list of all such persons and any persons submitting written comments on the proposed Rule.

2. That the Administrative Director send a copy of the Order Commencing Rulemaking Proceeding to the Secretary of State for publication in accordance with 5 M.R.S.A. § 8503.

Dated at Augusta, Maine, this 21 3rd 19 day of October, 1997.

BY ORDER OF THE COMMISSION

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Dennis Keschl  
Administrative Director

COMMISSIONERS VOTING FOR: Welch  
Nugent  
Hunt

**Chapter 302      CONSUMER EDUCATION PROGRAM; ELECTRIC INDUSTRY  
RESTRUCTURING**

**§ 1    PURPOSE OF RULE**

This rule implements a consumer education program to educate the public about implementation of retail access and its impact on consumers.

**§ 2    DEFINITIONS**

**A.    Consumer Education Program.** Consumer education program means the program, undertaken, sponsored or authorized by the Commission, to educate consumers about the implementation of electric industry retail access and its impact on consumers.

**B.    Competitive Generation Provider.** Competitive generation provider means a marketer, broker, aggregator or any other entity selling electricity to the public at retail.

**C.    Retail Access.** Retail access means the right of a retail consumer of electricity to purchase generation services from a competitive generation provider.

**D.    Utility-Sponsored Education Activity.** Utility-sponsored educational activity means an electric or transmission and distribution utility-sponsored activity to educate consumers

about retail access if the activity is not part of the consumer education program.

**§ 3 PROGRAM SCOPE**

**A. Program Goals.** The goals of the consumer education program are:

1. increase consumer awareness of retail access and related issues;
2. facilitate informed consumer decision-making about choices resulting from retail access;
3. provide to consumers an objective and credible source of information relating to retail access.

**B. Consumers Targeted by Program.** The consumer education program is targeted to residential consumers, small business consumers, and municipal consumers.

**C. Topics for Education.** The topics of the consumer education program shall include but are not limited to:

1. existence of competitive generation services
2. choice of competitive generation providers

3. regulated transmission and distribution services
4. system reliability
5. aggregation
6. standard offer service
7. itemized billing
8. stranded costs
9. uniform disclosure requirements
10. low income bill payment assistance programs
11. renewable energy resource programs
12. energy conservation programs
13. availability of "do-not-call" list
13. timeline for retail access

**D. Methods of Education.** The methods of education incorporated in the consumer education program may include, but are not limited to:

1. press releases and other press outreach methods
2. advertisements and public service announcements on television, radio, newspaper and possibly other media
3. education delivered by community organizations
4. informational brochures and fact sheets
5. restructuring newsletters
6. direct mail and bill inserts
7. information clearinghouse at the Commission

8. internet; Commission's home page on the world wide web
9. speakers' bureau
10. participation of community leaders in educational efforts
11. participation of large employers in educational efforts
12. public meetings
13. workshops for consumer groups
14. toll-free telephone hotline for questions about retail access

#### **§ 4 FUNDING**

**A. Level.** The consumer education program shall be funded up to \$1,600,000.

**B. Source.** To fund the design and implementation of the consumer education program, electric or transmission and distribution utilities will pay a special assessment based on a proportion of those utilities' gross revenues from regulated services. This assessment is a just and reasonable operating cost for ratemaking purposes and shall be recoverable from ratepayers. Utilities may defer amounts paid under this section with carrying costs until an appropriate ratemaking proceeding. These amounts may be recovered

from ratepayers notwithstanding any provision of a utility rate cap plan.

**C. Special Assessment.**

1. Amount. Every electric and transmission and distribution utility subject to assessment under 35-A M.R.S.A. § 116 is subject to an additional assessment on its gross intrastate operating revenues for regulated services. This assessment shall produce no more than \$200,000 in revenues in fiscal year 1997-98, no more than \$600,000 in revenues in fiscal year 1998-99, no more than \$600,000 in revenues in fiscal year 1999-2000, and no more than \$200,000 in revenues in fiscal year 2000-01.
2. Billing and Due Dates. The assessment for fiscal year 1997-98 will be billed upon the effective date of this chapter and any enabling legislation, whichever is later. The assessment shall be due 30 days after the billing date. The assessments for subsequent fiscal years will be billed on May 1, and shall be due on July 1 of each year.

3. Accounting The revenues produced from this assessment shall be used for the design and implementation of the consumer education program. These funds shall be raised and accounted for in accordance with the provisions of 35-A M.R.S.A. § 116, and shall be paid to the Treasurer of State and deposited in an account called the Public Utilities Commission Consumer Education Fund. Funds produced from this special assessment and not expended during any fiscal year may be carried over to the subsequent fiscal year. Any funds remaining in the Public Utilities Commission Consumer Education Fund at the conclusion of the program will be returned proportionally to assessed utilities by reducing their next annual assessment. The returned funds shall be flowed through to ratepayers in an appropriate ratesetting proceeding.

## **§ 5 IMPLEMENTATION**

- A. Conduct of the Program. The Commission shall design and implement the consumer education program. The Commission may contract for services for program design and implementation.

- B. **Proposed Consumer Education Program Plan.** The Commission shall issue a proposed consumer education plan and provide an opportunity for public comment on its proposed plan. The Commission shall adopt a final plan by August 4, 1998.
- C. **Modification of Plan.** The Commission may modify its consumer education plan based on the results of its evaluation(s) performed pursuant to this rule.
- D. **Program Duration.** The consumer education program shall continue through September 2000. The Commission may extend the program upon a finding that continuation of the consumer education program is in the public interest.

## **§ 6 UTILITY SPONSORED EDUCATIONAL ACTIVITIES**

- A. **Ratemaking Treatment.** The costs of utility sponsored educational activities shall not be included in electric or transmission and distribution utility rates unless the utility demonstrates in a ratemaking proceeding that expenditures for activities that are



not part of the consumer education program are necessary and in the public interest.

**B. Informational Filings.** Electric and transmission and distribution utilities shall file with the Commission, for informational purposes, any materials that are part of or related to utility sponsored educational activities. The materials shall be filed at least three weeks before the commencement of the activity of which the materials are a part or to which the materials relate.

**C. Investigation.** The Commission may investigate any utility-sponsored educational activity and order a utility to cease the activity, if it finds after a summary investigation that there are sufficient grounds to investigate whether the activity is misleading, inaccurate or contrary to the public interest.

## **§ 7 DISSEMINATION OF INFORMATION**

The Commission may require that electric and transmission and distribution utilities disseminate information produced as part of the Commission's consumer education program. Required information for dissemination by the utility may include

clarification of any utility sponsored education activity to the extent such clarification is necessary to correct a confusing, misleading, or inaccurate information provided by the utility.

**§ 8 PROGRAM RESEARCH, MONITORING AND EVALUATION; REPORTS TO THE LEGISLATURE**

- A. Criteria for Monitoring.** The consumer education plan shall identify criteria the Commission will use to evaluate the consumer education program. The Commission may consider these criteria in determining whether to modify the program. Criteria may include target levels for consumer understanding of issues relating to retail access.
- B. Research.** The Commission may conduct research to tailor the consumer education program to the needs of consumers and to reach the target audience. Such research may include focus groups to test proposed messages and periodic surveys to assess program success and levels of consumer understanding of issues relating to retail access.
- C. Evaluation.** The Commission shall evaluate the effectiveness of the consumer education program in 1999 and at the conclusion of the consumer education

program. The Commission may perform additional evaluations to determine the effectiveness of the consumer education program.

- D. Reports to Legislature.** The Commission shall file reports with the Legislature by December 31, 1999 and December 31, 2000 to report the results of the program evaluation. The Commission will provide this report as part of the its annual restructuring report.